IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GLEN M. FALLIN,	:	
Plaintiff,	:	**Civ. No. 1:14-CV-2427**
v.	:	
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, KURT J. MEYERS, ALLEN D. BIEHLER, and DEBORA LITTLE,	:	**Judge Sylvia H. Rambo**
Defendants.	:	

M E M O R A N D U M

By order dated October 28, 2015 (Doc. 23), the court dismissed this Section 1983 claim pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Presently before the court is Plaintiff's motion for reconsideration. (Doc. 24.) For the reasons stated herein, the motion will be denied.

I. Background

Beginning in 2007, Plaintiff Glenn M. Fallin ("Plaintiff") commenced a commercial trucking operation through CleanTrans, Inc. ("CleanTrans"), a Nevada close corporation that Plaintiff organized and for which he served as the president, sole employee, and alter ego. (Doc. 1 at ¶¶ 11, 14.) Pursuant to a power of attorney document, Plaintiff, as agent for Elliott Haines, III ("Haines"), purchased a commercial trailer and leased it to CleanTrans. (*Id.* at ¶¶ 9-10.) Acting as Haines' agent, Plaintiff then registered the trailer with Dorothea Burger ("Burger"), an agent of PennDOT, paid the registration fees, and

received a registration certificate and a metal license tag. (*Id*. at ¶¶ 8-9.) Approximately three months after registering the trailer, Plaintiff provided the "MC number" issued to CleanTrans by the Federal Motor Carrier Safety Administration to Burger upon her request. (*Id*. at ¶ 15.)

In December 2007, Plaintiff attempted to make a delivery to a military installation, believed to be Maguire Air Force Base in New Jersey, but was not permitted onto the base because military personnel could not locate the trailer's registration in PennDOT's databases. (*Id*. at ¶ 17.) This resulted in a three day delay. (*Id*.) Plaintiff sought to resolve the "predicament" by calling the Governor of Pennsylvania, who referred him to Defendant Secretary of Transportation Allen D. Biehler ("Biehler"), who referred him to Defendant Deputy Secretary of Driver and Motor Vehicle Services Kurt J. Myers ("Myers"), who referred him to Defendant PennDOT employee Debora Little ("Little," and collectively "Defendants"). (*Id*. at ¶ 18.) Unable to speak with Little, Plaintiff sent a letter by facsimile explaining that the trailer was not properly registered, and Little eventually responded by providing Plaintiff with "a sheath of forms." (*Id*.) Military security later permitted him to complete his delivery by escort. (*Id*. at ¶ 19.)

On April 28, 2008, Plaintiff was again detained for at least two hours by police officers in Newberry Township, Pennsylvania, for an alleged violation of a state law requiring vehicles used in interstate commerce to be inspected in Pennsylvania. (*Id*. at ¶

22.) Plaintiff alleges the police justified the detention because of the trailer's ineffective registration with PennDOT and estimates his lost opportunity at $4,000. (*Id.*)

In his complaint, Plaintiff asserts that, at the time of these incidents, it was his belief that PennDOT had issued notice to himself and Haines that the trailer was not properly registered, but that "such notice had been lost and/or overlooked." (*Id.* at ¶ 12.) However, approximately four and a half years later, Plaintiff visited PennDOT's office in Harrisburg, Pennsylvania, to discuss the two earlier incidents and was informed by a PennDOT supervisor that notice had not been provided regarding the denial of his application for registration. (*Id.* at ¶ 23.)

Proceeding in this matter *pro se*, Plaintiff initiated this Section 1983 action by filing a complaint on December 22, 2014. (*See generally id.*) On October 28, 2015, the court dismissed Plaintiff's claim pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. (Doc. 22.) The court found that the two-year statute of limitation for Plaintiff's cause of action expired in April 2010 because Plaintiff, had he exercised due diligence, would have possessed a complete cause of action in April 2008 at the latest. (Doc. 23.) In response, Plaintiff filed a Rule 59(e) motion to alter or amend the judgment and a brief in support. (Doc. 24.) Defendants filed a brief in opposition (Doc. 27), to which Plaintiff filed a reply (Doc. 28). Thus, the motion has been fully briefed and is ripe for disposition.

II. Legal Standard

Motions for reconsideration under Federal Rule of Civil Procedure 59(e) serve primarily to correct manifest errors of law or fact in a prior decision of the court. *See United States v. Fiorelli*, 337 F.3d 282, 288 (3d Cir. 2003). Under Rule 59(e), "a judgment may be altered or amended if the party seeking reconsideration establishes at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). Motions for reconsideration may also be appropriate in instances "where, for example, the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension." *Reaves v. Pa. State Police*, Civ. No. 09-cv-2549, 2014 WL 486741, *3 (M.D. Pa. Feb. 6, 2014) (quoting *Rohrbach v. AT&T Nassau Metals Corp.*, 902 F. Supp. 523, 527 (M.D. Pa. 1995)). "A motion for reconsideration is not to be used as a means to reargue matters already argued and disposed of or as an attempt to relitigate a point of disagreement between the Court and the litigant." *Ogden v. Keystone Residence*, 226 F. Supp. 2d 588, 606 (M.D. Pa. 2002). "Likewise, reconsideration motions may not be used to raise new arguments or present evidence that could have been raised prior to the entry of judgment." *Hill v. Tammac Corp.*, Civ. No. 05-cv-1148, 2006 WL 529044, *2

(M.D. Pa. Mar. 3, 2006) (citing *McDowell Oil Serv., Inc. v. Interstate Fire & Cas. Co.*, 817 F. Supp. 538, 541 (M.D. Pa. 1993)). Reconsideration of a judgment is an extraordinary remedy, and courts should grant such motions sparingly. *D'Angio v. Borough of Nescopeck*, 56 F. Supp. 2d 502, 504 (M.D. Pa. 1999).

It follows from the remedial purpose of a Rule 59(e) motion that the standard of review relates back to the standard applicable in the underlying decision. *See Fiorelli*, 337 F.3d at 288. Accordingly, when a motion for reconsideration challenges the court's decision to grant or deny a motion to dismiss for failure to state a claim, the standard set forth in Federal Rule of Civil Procedure 12(b)(6) guides the analysis. In reviewing the motion, a court "may consider only the allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim." *Lum v. Bank of Am.*, 361 F.3d 217, 221 n.3 (3d Cir. 2004). A motion to dismiss may only be granted when, taking all well-pleaded factual allegations and inferences drawn therefrom as true, the moving party is entitled to judgment as a matter of law. *Markowitz v. Ne. Land Co.*, 906 F.2d 100, 103 (3d Cir. 1990). Although not specifically provided for under Rule 12(b)(6), a statute of limitations defense may be raised in a motion to dismiss "where the complaint facially shows noncompliance with the limitations period and the affirmative defense clearly appears on the face of the pleading." *Frasier-Kane v. City of Phila.*, 517 F. App'x 104, 107 n.1 (3d Cir. 2013) (quoting *Oshiver v. Levin, Fishbein, Sedran & Berman*,

38 F.3d 1380, 1384 n. 1 (3d Cir. 1994)). It is through this lens that the court must address Defendant's instant motion.

III. Discussion

Plaintiff challenges the court's finding that Plaintiff failed to utilize the requisite due diligence to discover PennDOT's alleged inadequate notice procedure as a clear error of law resulting in a manifest injustice. (*See* Doc. 24.) First, Plaintiff asserts that PennDOT's alleged disclosure that it does not issue notices of failure to register vehicles was an extraordinary event that would not likely have occurred even had Plaintiff employed the due diligence required of him. (Doc.24, pp. 3-5.) In addition, Plaintiff seeks to introduce facts relating to a December 2010 communication between Plaintiff and a PennDOT supervisor, wherein the supervisor allegedly informed Plaintiff that a notice had been issued. Although Plaintiff omitted this communication from the complaint, he argues that it would serve as further evidence that he exercised due diligence and that PennDOT's disclosure was an extraordinary event. (*Id.* at p. 5.) As a result, Plaintiff contends that, under the discovery rule, the statute of limitations should not begin until December 2012, when he was informed by PennDOT that he had not been provided notice regarding the denial of his application for registration.

In Pennsylvania, the discovery rule will delay the start of the statute of limitations if "a plaintiff could not reasonably have known of his injury and its cause if, 'despite the exercise of due diligence,' he was unable to 'ascertain the fact of a cause of

action.'" *Cowgill v. Raymark Indus., Inc.*, 780 F.2d 324, 330 (3 d Cir. 1985) (quoting *Pocono Int'l Raceway v. Pocono Produce, Inc.*, 468 A.2d 468, 471 (Pa. 1983)). Because it is an exception to the general rule "that the statute of limitations begins to run as soon as the right to institute and maintain a suit arises," the "one claiming the benefit of the [discovery rule] exception bears the burden of esta blishing that []he falls within it." *Cochran v. GAF Corp.*, 666 A.2d 245, 249 (Pa. 1995) (citing *Pocono*, 468 A.2d at 471).

Here, in essence, Plaintiff requests th at the court reward him for his la ck of due diligence between 2007 and 2012. As the court noted in its memorandum dismissing the complaint, Plaintiff could have discovered PennDOT's alleged inadequate notice in 2007 or 2008 after two separate incidents where he was denied entry to m ilitary installations as a result of his incom plete registration. (Doc. 22, p. 12.) By Plaintiff's ow n admissions in the complaint, he made no inquiries into the lack of notice and the inco mplete registration until December 20, 2012. (Doc. 1, ¶ 23.) Regardless of whether PennDOT's alleged disclosure was an ex traordinary event, if Plaintiff ha d exercised due diligence during the intervening four years, he would have ma de further inquiries to PennDOT regarding the lack of notice and the process required to com plete registration. Continued inquiries would have revealed the lack of notice, wherein Plaintiff would have discovered his injury. Instead, Plaintiff assumed that notice had been sent without attempting to verify that fact.

In addition, Plaintiff's newly proffered communication between himself and a PennDOT supervisor in Decem ber of 2010 does not change the court's decision as it is

neither "new evidence that was not available when the court granted the motion for summary judgment," *Max's Seafood Cafe*, 176 F.3d at 677, nor can it be considered by this court because a reconsideration motion "may not be used to . . . present evidence that could have been raised prior to the entry of judgment." *Hill*, 2006 WL 529044, at *2 (citing *McDowell Oil Serv., Inc.*, 817 F. Supp. at 541). Plaintiff cannot now be absolved of his failure to produce the alleged facts in a timely fashion.

IV. Conclusion

As discussed above, there is no need to correct a clear error of law or fact to prevent manifest injustice in the present case. Plaintiff failed to utilize due diligence and cannot now introduce new evidence that could have and should have been raised prior to the entry of judgment. For the foregoing reasons, the motion will be dismissed with prejudice.

An appropriate order will issue.

s/Sylvia H. Rambo
United States District Judge

Dated: March 23, 2016